

EXHIBIT A

smobley(1)

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IN THE COURT OF COMMON PLEAS

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

4

CRIMINAL TRIAL DIVISION

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COMMONWEALTH

:

8

vs.

:

9

SHAWN MOBLEY

:

CP-51-CR-0003485-2016

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- - -

11

April 3, 2017

12

Courtroom 704, Criminal Justice Center

13

Philadelphia, Pennsylvania

14

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MOTION

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BEFORE: THE HONORABLE VINCENT MELCHIORRE, J.

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2 APPEARANCES:

3 ZACHARY WYNKOOP, ESQUIRE
Assistant District Attorney
4 For the Commonwealth

5 BERTO ELMORE, ESQUIRE
Counsel for the Defendant

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I N D E X

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COMMONWEALTH'S EVIDENCE

4 WITNESS

DIR. CR. REDIR. RECR.

5 Officer Farley

8 20 37

6

E X H I B I T S

7 NUMBER

DESCRIPTION

FOR ID

8

(None marked.)

9

I N D E X

10

DEFENSE EVIDENCE

11 WITNESS

DIR. CR. REDIR. RECR.

12

(None called.)

13

E X H I B I T S

14 NUMBER

DESCRIPTION

FOR ID

15 D-1

Photograph

26

16 D-2

Photograph

26

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17 D-3 Photograph 26
18 D-4 Photograph 28
19 D-5 Notes of testimony 35
20
21
22
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1 COMMONWEALTH VS MOBLEY
2 THE CRIER: Okay. This is Case No.
3 3, Shawn Mobley.
4 It's my understanding defense has a
5 motion to suppress?
6 MR. ELMORE: Yes, I do, Judge.
7 Judge, I want to ask the Court, does
8 the Court mind if I remain seated?
9 THE COURT: No. The DA may remain
10 seated as well.
11 MR. WYNKOOP: Thank you, Your Honor.
12 THE COURT: And Mr. Mobley is in the
13 room.

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14 MR. ELMORE: Yes.

15 THE COURT: Police Officer Keyes is
16 the Commonwealth's expert witness is in
17 the room.

18 And the other officer?

19 MR. WYNKOOP: That officer is not on
20 this matter.

21 THE COURT: Okay. Sequestration is
22 in effect, and defense you may state
23 your grounds.

24 MR. ELMORE: Your Honor, I have a
25 motion to suppress that the evidence

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2 seized in this particular case, the
3 drugs, were seized in violation of the
4 United States Constitution, 4th
5 Amendment, also under the Pennsylvania
6 Constitution, Article I, Section 8.

7 Your Honor, in this particular case,
8 we have a motion to suppress that the
9 search warrant, well, there's two or
10 three prongs in this particular case;

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11 one, is that the entry and search of
12 the premises by the police officer, the
13 initial police officer was done without
14 permission. There's no exigent
15 circumstances to enter the prem -- to
16 enter the premises.

17 Number two, there was a search
18 warrant issued, but based on the fact
19 that the search warrant would be
20 invalid because the warrant was
21 obtained after illegal entry into the
22 house, and then search of the premises.
23 Then the arrest of my client obviously
24 is tainted and anything recovered from
25 him are fruits of the poisonous tree

6

1 COMMONWEALTH VS MOBLEY
2 from the illegal entry into the house.
3 Basically, Judge, what we have is a
4 house and the officers entry into that
5 house is in violation of the
6 constitution, as well as the Rules of
7 Criminal Procedure in terms of the

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8 manner of entering a person's house.

9 And it's also one of the areas at
10 issue that I'm going to raise in terms
11 of no knock. They just went inside the
12 house. So they're bringing in the
13 Rules of Criminal Procedure as well.

14 THE COURT: Okay. Thank you.

15 You may proceed.

16 MR. WYNKOOP: Your Honor, if I
17 could, I just wanted to clarify in
18 Courtroom 704, do you do the motion to
19 quash after we do the motion to
20 suppress because I have a motion to
21 quash here that I believe we were doing
22 that first?

23 THE COURT: I had no idea there was
24 a motion to quash.

25 MR. WYNKOOP: I do have a copy of a

7

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2 motion to quash from Mr. Elmore. I
3 don't know if he filed it with the
4 Court.

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5 MR. ELMORE: Oh, no, we're not doing
6 that. That was just one of the things
7 I checked.

8 MR. WYNKOOP: Understood.

9 Then Your Honor we're ready for a
10 motion to suppress.

11 THE COURT: So there is no motion to
12 quash?

13 MR. ELMORE: No.

14 THE COURT: Because we had talked
15 about this earlier, and that wasn't
16 mentioned. So counsel verified there
17 is no motion to quash.

18 MR. WYNKOOP: And with the Court's
19 permission, the Commonwealth would call
20 Police Officer Farley.

21 THE COURT: Thank you.

22 THE CRIER: Please remain standing.
23 State for the record your name, spell
24 your name, badge number, your
25 assignment please.

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2 OFFICER FARLEY: Police Officer
3 Steven Farley, with a v, F-a-r-l-e-y,
4 Badge No. 4716, currently assigned to
5 the 19th District.

6 THE CRIER: Raise your right hand.

7 OFFICER FARLEY, having been duly
8 sworn, was examined and testified as
9 follows:

10 THE COURT: Good morning.

11 THE WITNESS: Good morning, Your
12 Honor.

13 THE COURT: You may proceed.

14 MR. WYNKOOP: Thank, Your Honor.

15 - - -

16 DIRECT EXAMINATION

17 - - -

18 BY MR. WYNKOOP:

19 Q. Officer Farley, good morning.

20 A. Good morning.

21 Q. Officer Farley, I want to take you back to
22 March 1st of last year. Were you working then as
23 a Philadelphia police officer?

24 A. Yes.

25 Q. And, specifically, what district were you

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2 working in, Officer Farley?

3 A. The 19th District.

4 Q. And does that district encompass 728 North
5 63rd Street?

6 A. Yes.

7 Q. And did your tour of duty take you to that
8 location that evening?

9 A. It did.

10 Q. And was that approximately 10:30 p.m.?

11 A. Yes.

12 Q. Officer Farley, at that date, time, and
13 location did you encounter anybody that you see
14 in the courtroom today?

15 A. Yes. The gentlemen with the -- it looks
16 like a blue sweater.

17 MR. WYNKOOP: By point of finger and
18 article of clothing, the officer has
19 identified the defendant for the
20 record, Your Honor.

21 THE COURT: So noted.

22 BY MR. WYNKOOP:

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23 Q. Officer Farley, when you first encountered
24 the defendant that evening, where was he?

25 A. On the side of the house. Your Honor, it

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2 was like a twin, a twin house, so it was towards
3 the rear of the home and on the side.

4 Q. And is there anybody else outside with this
5 defendant?

6 A. Yes, there were multiple people.

7 Q. And can you describe for His Honor the
8 scene that you came upon when you arrived on the
9 location?

10 A. It looked like there was a disturbance out
11 there. There was a lot of yelling and screaming.

12 MR. ELMORE: Objection. I would ask
13 that he be instructed to testify not to
14 what it seems, but what he saw.

15 THE COURT: Well, I mean he has to
16 see it and process it, so what is it
17 that you saw?

18 THE WITNESS: Yelling back and
19 forth.

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20 BY MR. WYNKOOP:

21 Q. Officer Farley, what other information led
22 you to believe that there was a disturbance going
23 on at that location?

24 A. I spoke to both parties. I spoke to the
25 defendant. I spoke to -- the defendant stated to

11

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2 me that he owned the property and that he was the
Falsi 3 landlord of the property. And the other people,
4 I believe, they were tenants on the third floor.
5 There was multiple people and I spoke to them and
6 there had been a dispute over shutting off the
7 electricity.

8 Q. Where were the electrical panels?

9 A. In the basement.

10 Q. And who was it that was trying to shut off
11 the electricity?

12 A. The defendant.

13 Q. And, Officer Farley, when you said that you
14 arrived and there were parties yelling, was the
15 defendant one of those parties?

16 A. Yes.

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17 Q. Officer Farley, after your initial
18 assessment of what's going on at the scene, did
19 you interact again with the defendant?
20 A. Yes. After, Your Honor, after we thought
21 we had straightened or did the best we could to
22 straighten out the initial dispute as far as the
23 landlord and the tenant electricity, the
24 defendant came back. He's out front speaking to
25 my partner. I was speaking to the other party.

12

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2 When we were getting ready to leave he said he
3 was leaving and he needed to retrieve his keys.
4 He said he left them in the basement.

5 When we went back to -- there was a
6 metal gate outside the steps, Your Honor.

7 So there was a metal gate, the door,
8 like a chain door if I recall correctly, and it
9 led down the steps to a little landing and then
10 on the left side there was a door that led into
11 the basement. On the very top where the metal
12 gate was, there was a chain and a padlock that
13 had been placed on there. It was not a



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14 combination lock but one with a key and it had
15 been placed there by the third floor --

16 MR. ELMORE: Objection. He didn't
17 see it.

18 THE COURT: Unless he has specific
19 knowledge.

20 THE WITNESS: The gentleman told me
21 that he put the lock on the door.

22 THE COURT: The third floor tenant
23 said that?

24 THE WITNESS: Correct. I believe
25 his name was Ibrahim Howard (ph).

13

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2 A. So at that point the door was unlocked. I
3 went back into the basement with the defendant

False — 4 [along with Officer Lee.] ~~When I went down into~~
5 ~~the basement I smelled what I believed to be~~
6 ~~burnt marijuana.~~

7 Q. Officer Farley, if we could pause for a
8 second and go back. When the defendant
9 discovered the padlock on his basement door what
10 was his reaction?



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11 A. He was upset, and he said they couldn't do
12 that.

13 Q. Okay. And how was anybody able to get that
14 padlock off?

15 A. The gentleman had told me that he locked
16 it, he had the key, and he unlocked it.

17 Q. And can you describe for the Court how you
18 end up in the basement with the defendant?

19 A. We were still just kind of talking, like
20 still just doing the job, following him, went
21 down with him, just to assist him with finding
22 his keys. I had my flashlight. We just went
23 down in the basement.

24 Q. And throughout the evening the
25 conversations you were having with the defendant

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14

1 COMMONWEALTH VS. MOBLEY

2 that night, what was the basis of those
3 conversations?

4 A. Just everything as far as what he was doing
5 as a landlord.

6 Q. Now, after smelling the burnt marijuana in
7 the basement does the defendant remain in the

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8 basement?

9 A. Yes. He was looking around for, he said
10 his keys. Your Honor, I remember when I went
11 down, on the right-hand side, there was, it
12 looked like shelving there, was a set of keys
13 hanging. I did notice the defendant walked by
14 them and not grab them. He seemed to be pacing
15 back and forth. He stated to me -- he stated to
16 me that he thought the tenants stole his keys,
17 and I told him that I didn't believe that
18 happened because I hadn't seen anyone go to the
19 basement, and I pointed out, I said, "Are those
20 your keys right there?" And just real quick he
21 said "Oh, yeah, they're mine," and we exited the
22 basement.

23 Q. After you exited the basement, did you and
24 your partner leave the scene?

25 A. We were getting ready to, we were going to

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2 try -- well not try. I spoke to the defendant
3 and the defendant said there were two keys to the
4 locks, and we worked out an agreement where he



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5 was going to keep a key and the tenant was going

6 to keep a key. False

7 [And when I went to give him his key,] False

8 I noticed the defendant left the location and at

9 that point I also noticed the chain, I don't

10 recall if the lock was gone, but I know that the

11 chain was gone because we weren't able to secure

12 the door.

13 Q. And as a result of you and your partner not

14 being able to secure the basement door, what did

15 you do next?

16 A. I went back into the basement. When we

17 went in there he had referred to it as his

18 office.

19 Q. When you say "He referred to it as his

20 office," who are you referring to?

21 A. I'm sorry. The defendant.

22 Q. Okay. What were you looking for down

23 there, when you returned to the basement?

24 A. Just something to secure the door. Because

25 it looked like he, you know, being the landlord,

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2 I was kind of hoping to find something to secure
3 the door with.

4 Q. And did you eventually find something to
5 secure the door with?

6 A. Well, later on.

7 Q. I'll rephrase that question, Officer
8 Farley. Did you find something to secure the
9 door within the basement?

10 A. No. ~~At that time, I went back into the~~
11 ~~basement, Your Honor, I started noticing more so~~
12 ~~than the burnt marijuana smell, I started~~
13 ~~smelling unburnt marijuana.~~ And as I was walking
14 just looking for something to secure the door
15 with, I noticed in the back, the rear part of the
16 basement, there's a desk and I saw unused
17 baggies. I recognized the packaging material for
18 narcotics and I also saw a digital scale sitting
19 on top of the desk.

20 And then I also saw a bag on the
21 floor and it had bulk marijuana in there.

22 Q. And, Officer Farley, you mentioned during
23 your testimony today, that at different times you
24 smelled both burnt and unburnt marijuana in the
25 basement. Can you describe to the Court what you

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2 believe the difference between the two to be?

3 A. It's kind of hard to describe, Your Honor.

4 It's just more off of experience. Like I can

5 tell you what a raw onion smells like and what a

6 fried onion smells like but I don't know if I can

7 articulate it. There's definitely a difference

8 though, that I recognize.

9 THE COURT: If I may, the burnt

10 would be after someone smoked

11 it?

12 THE WITNESS: Yes, it just has a

13 different smell to it.

14 BY MR. WYNKOOP:

15 Q. Now you described the different smells,

16 Officer, and you mentioned your experience.

17 How long have you been a member of

18 the Philadelphia Police Department?

19 A. A little bit over seven years.

20 Q. And in those seven years, how much time

21 have you spent in the 19th Police District?

22 A. The whole time, I've been in the 19th

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23 District.

24 Q. And in your time in the 19th Police

25 District, prior to March 1st of 2016, which would

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2 have been approximately six years on the job, had

3 you encountered marijuana before?

4 A. Correct. Yea. I wouldn't say daily but 89

5 percent of my time that I patrol, I do smell

6 burnt marijuana and a lot of the times, I smell

7 unburnt marijuana also.

8 Q. Other than smelling burnt and unburnt

9 marijuana as a police officer, have you seen

10 marijuana?

11 A. Yes.

12 Q. Approximately how many times have you seen

13 it?

14 A. If I had to guess, I would say in the

15 hundreds, maybe even into a thousand times.

16 Q. And based on your experience, did you

17 recognize that baggie in the basement to contain

18 marijuana?

19 A. Yes.

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20 Q. Officer Farley, upon noticing unburnt
21 marijuana, the scale and the baggie what action
22 did you take next?

23 A. At that point I went and told Officer Lee
24 what I had discovered, and while speaking to
25 Police Officer Lee I saw the defendant walking

19

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2 southbound on 63rd Street. He had the chain in
3 his hand. We came up and at that time, I placed
4 him under arrest. I notified my supervisor, and
5 other 19th District personnel secured the
6 location and obtained a search warrant.

7 Q. Now, Officer Farley, if we could go back
8 for just a second, when you and the defendant
9 initially go into the basement, who goes down
10 first?

11 A. The defendant.

12 Q. And as you go after him and you two were
13 talking did he turn around and say "Stop"?

14 MR. ELMORE: Your Honor, I'm going
15 to object. I've given him a lot of
16 leeway, I believe, to leading

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17 questions.

18 I'm going to now object.

19 THE COURT: I'm going to sustain it

20 as to the question, did he say. You

21 have to ask something like did the

22 defendant say anything. You don't

23 suggest an answer in the question.

24 So I'll sustain that.

25 BY MR. WYNKOOP:

20

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2 Q. Other than the conversation that you were

3 having about the landlord/tenant dispute, as you

4 were entering into the basement, did the

5 defendant say anything else to you?

6 A. No.

7 MR. WYNKOOP: Your Honor, I don't

8 have any further questions.

9 I'd offer for cross.

10 THE COURT: Thank you.

11 You may cross.

12 - - -

13 CROSS-EXAMINATION

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- - -

15 BY MR. ELMORE:

16 Q. Officer, now you just testified there was a
17 landlord/tenant situation at that location; is
18 that correct?

19 A. Yes.

20 Q. And most of the time -- isn't there
21 directives that police don't get involved in
22 landlord/tenant disputes?

23 MR. WYNKOOP: Objection, Your Honor.

24 It's irrelevant through speculation.

25 THE COURT: Well, I mean, he can

21

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2 answer the question. Whether he may or
3 may not know, I mean, I don't know if
4 it makes a difference.

5 THE WITNESS: Your Honor, we respond
6 very often to landlord/tenants. What
7 we do is we advise both parties, it's a
8 civil matter not a police matter.

9 THE COURT: If there's an
10 altercation of some sort?

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11 THE WITNESS: Yea, if there's an
12 altercation, yes.

13 BY MR. ELMORE:

14 Q. And this situation you explained to the
15 parties that it was a civil matter; isn't that
16 correct; whether he had the ability to turn off
17 the lights or --

18 A. Well, it's illegal for the landlord to just
19 shut off the power or the water.

20 Q. Isn't that a civil matter?

21 MR. WYNKOOP: Objection, calls for
22 speculation.

23 THE WITNESS: I didn't arrest the
24 defendant for turning off the power,
25 Your Honor.

22

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2 MR. ELMORE: Okay.

3 BY MR. ELMORE:

4 Q. Now it says you spoke to both parties and I
5 assume that you calmed the situation down; is
6 that correct, you and your partner?

7 A. Correct.



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8 Q. Now, it says that my client walked, you
9 followed my client into the basement to get some
10 keys; is that correct?

11 A. Yes.

12 Q. And then you left the basement; is that
13 correct?

14 A. Correct, followed him back out.

15 Q. Okay. And at no point in time that he
16 left, did he give you permission to reenter that
17 location, did he, sir?

18 A. No, he was no longer on location.

19 Q. Okay. So he was not there. And you took
20 it upon yourself -- let me ask you this. Now,
21 you said when you first went down, you said you
22 smelt the marijuana; is that correct?

23 A. When I first went into the basement?

24 Q. Yes, when you first went down into the
25 basement?

23

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2 A. Correct, when I went first went down there,
3 Your Honor, I described it as someone had just
4 smoked marijuana.



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5 Q. I'm sorry. So at that particular point you
6 wanted to conduct an investigation or you wanted
7 to search for marijuana; isn't that correct?

8 A. No. To be honest, Your Honor, somebody
9 smoking marijuana, especially to target who
10 smoked, I've never arrested somebody for having
11 smoked marijuana that smelled like it. No I was
12 trying to finish that situation and I'm trying to
13 leave the location.

14 Q. All right. So, officer, you heard of a
15 police radio; is that right?

16 A. Correct.

17 Q. You just testified often times you have the
18 ability to secure the location; is that correct,
19 with the police radio, ask for back-up and
20 someone a police officer can stand there and
21 guard the location; isn't that correct?

22 A. Yea, if we're going to be holding the house
23 for a warrant or if there's like a missing child,
24 yes, there's time that we do need police
25 personnel on location.

*So protect the
Property*

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2 Q. Now at no point in time did my client ask
3 you to secure his -- secure the basement door,
4 did he, sir?

5 A. No.

6 Q. And so you took it upon yourself after you
7 allegedly smelt marijuana to go ^{*} [searching,] ^{*}
8 looking for something to lock, allegedly, the
9 basement door?

10 A. Correct, Your Honor. Before he left, there
11 was an agreement between both parties that a lock
12 would be on the door, and they both would each
13 have a key.

14 ~~With the chair being removed, at that~~
15 point and the defendant no longer being on
16 location, yes, I went down into the basement to
17 find something to secure the door, yes.

18 Q. You didn't hear anybody screaming down
19 there, or anything of that nature, did you, sir
20 like that, correct?

21 A. No, Your Honor, my only purpose for going
22 back down there was to find something to secure
23 the door.

24 Q. You did see in the immediate door area,
25 when you first walk in behind the metal gate,

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2 it's like a vestibule right, a little area,

3 correct?

4 A. Correct. Yea, there's stairs leading down

5 to a landing, or something like that, yes.

6 Q. And you didn't see anything immediately

7 right there at this gate or near the door, did

8 you, sir?

9 A. No, I didn't see anything until I was down

10 the steps.

11 Q. And then you decided well, I'm going to

12 open this door and go search for an item, right?

13 A. No, Your Honor. The second door was open.

14 That was the main concern. That door wasn't

15 secured at all.

16 Q. Okay, so --

17 A. When I went back downstairs that door was

18 still open.

19 Q. So let me ask you this: When you looked in

20 the second area, you didn't see anything that you

21 could lock the door; is that right?

22 A. I didn't find anything, Your Honor. I was

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23 looking around and in the process of looking is
24 when I discovered everything else, I saw
25 everything else.

26

1 COMMONWEALTH VS. MOBLEY

2 Q. As a matter of fact, it's a pretty large
3 basement, correct?

4 A. I mean it was a decent size. I don't
5 remember the dimensions of it.

6 MR. ELMORE: I have some pictures,
7 Your Honor.

8 I would ask that they be marked as
9 D-1, D-2 and D-3.

10 You have a copy.

11 MR. WYNKOOP: I do. I would just
12 ask which ones you're handing up.

13 (Copies of photographs marked
14 Defense Exhibit D-1 through Defense
15 Exhibit No. 3 for identification.)

16 BY MR. ELMORE:

17 Q. Officer, let me ask you a question: The
18 lights were on in the basement; isn't that
19 correct, this was at night, right?

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20 A. Yes, it was nighttime and if I recall
21 correctly, counselor, I believe there were lights
22 in the rear. I don't remember. I remember
23 having the flashlight in the front room.

24 Q. In the front room?

25 A. In the front section, correct.

27

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2 MR. ELMORE: Okay. I'm going to ask
3 that we show the officer what's been
4 marked D-1.

5 THE COURT: What is D-1?

6 MR. ELMORE: D-1 is a picture of the
7 gate area.

8 I'm going to show it to the officer.

9 And we'll mark this as D-2.

10 THE COURT: What is D-2?

11 MR. ELMORE: D-2 is the first
12 initial door that you go into the
13 basement.

14 D-3 is also a picture of the --

15 THE COURT: D-3?

16 MR. ELMORE: D-3 is also a picture

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17 of the entryway where the door is that
18 leads into the basement.

19 (Pause.)

20 MR. ELMORE: Where did I stop, D-3?

21 THE COURT: Yes.

22 MR. ELMORE: D-4 is when you're
23 looking when you first walk through the
24 door that takes you into the basement.
25 That would be D-4.

28

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2 (Copy of photograph marked Defense
3 Exhibit D-4 for identification.)

4 MR. ELMORE: Your Honor, if I may
5 approach the witness?

6 THE COURT: You may.

7 THE CRIER: Exhibits marked D-1
8 through D-4.

9 MR. WYNKOOP: Your Honor, I don't
10 even think I have D-3, so if I could
11 approach as well?

12 THE COURT: Yes.

13 BY MR. ELMORE:

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14 Q. Officer, I have some pictures that have
15 been marked. Officer, this is the first metal
16 door, correct?

17 A. Yes, it looks similar.

18 THE COURT: Which exhibit is that?

19 MR. ELMORE: D-1.

20 THE COURT: D-1. Thank you.

21 BY MR. ELMORE:

22 Q. And D-3, is that the area when you first go
23 down the basement steps?

24 A. This area here is what you referred to as
25 the vestibule. I think I called it a landing,

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2 yea.

3 Q. Okay.

4 A. That's the stairwell outside of the
5 basement.

6 Q. And D-2 that would be the door where you
7 come into the basement, right?

8 A. (No response.)

9 Q. Do you see the shovels right there?

10 A. Yea, I mean, yes, Your Honor. I was only

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11 inside the basement one time, so to the best of
12 my knowledge, yes. *Fake*

13 THE COURT: To the best of your
14 recollection?

15 THE WITNESS: Yes.

16 MR. ELMORE: Okay.

17 THE COURT: So D-2 would be the door
18 that goes into the basement?

19 THE WITNESS: They're all doors that
20 go into the basement. It seems to me
21 it's the same door from three different
22 perspectives.

23 BY MR. ELMORE:

24 Q. Now, officer, this would be what you viewed
25 once you looked inside?

30

1 COMMONWEALTH VS. MOBLEY

2 THE COURT: Which exhibit?

3 MR. ELMORE: This is Exhibit D-4.

4 BY MR. ELMORE:

5 Q. When you looked inside from the doorway,
6 correct?

7 A. Yes, there's a partition here, and it

smobley(1)

8 looked like drywall.

9 Q. Now, officer, when you're looking at 1
10 through 4, you didn't see any alleged contraband,
11 did you, sir?

12 A. No, could you repeat your question?

13 Q. My question is, you didn't see any
14 contraband, right there when you walked through
15 the door?

16 A. That is correct.

17 Q. And you had already previously testified to
18 the smell of marijuana, right?

19 A. Correct.

20 Q. When you walked back, it was actually
21 searching -- you can say you were searching for a
22 lock or anything, but you were searching that
23 house, that basement area; is that correct?

24 MR. WYNKOOP: Objection to
25 searching is a legal conclusion, Your

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1 COMMONWEALTH VS. MOBLEY

2 Honor.

3 MR. ELMORE: No, it isn't.

4 THE COURT: Sustained.

smobley(1)

5 BY MR. ELMORE:

6 Q. You were looking.

7 A. Your Honor, I wasn't looking for anything
8 illegal, or any contraband. I was just looking
9 for something to secure the door.

10 Q. Okay. And you happened and all this time,
11 you just -- strike that --

12 Now, officer, you said you had the
13 opportunity to talk to my client outside when you
14 were trying to calm down the arguing, correct,
15 landlord/tenant arguing, correct?

16 A. Yes.

17 Q. Okay. Now during the course of that time
18 you took down information you and your partner,
19 isn't that correct?

20 A. We were separated Your, Honor, and I
21 believe Officer Lee did most of the dealings with
22 -- as far as gathering information.

23 Q. He was gathering information, ID, phone
24 number I take it, any information that you would
25 normally put on a 75-48?

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smobley(1)

2 A. Correct. That would have been Officer Lee,
3 I believe I was speaking to the tenants of the
4 building.

5 Q. So at some point Officer Lee felt that he
6 had retained enough information from this
7 individual that he told him he could leave if he
8 wanted to, right?

9 A. I can't speculate as to what Officer Lee
10 was feeling. I wasn't out there with him. When
11 I went out to speak to Officer Lee again, the
12 defendant was still there.

13 Q. My client was still there, okay.

14 A. Yes.

15 Q. Now, did you retain his phone number or do
16 you recall Officer Lee retaining his cell phone
17 number?

18 A. I don't recall.

19 Q. You don't recall. Now, my client at no
20 point in time asked you to make sure his building
21 was locked and secured, did he, sir?

22 A. No.

23 Q. And you said that -- you said that you went
24 back searching back further in the building in
25 the basement. You said that because you wanted

smobley(1)

33

1 COMMONWEALTH VS. MOBLEY

2 to find a lock of some kind?

3 A. I was just looking for an object like more
4 of a chain, and Your Honor, as I was just walking
5 through looking in the basement that's when I saw
6 the stuff.

7 Q. Now, did you or your partner attempt to
8 locate or ask Mr. Mobley if it was okay to secure
9 this room? You didn't have any conversation with
10 him did you, sir?

11 A. Your Honor, after it was discovered that a
12 lock had been placed on it, then we -- I thought
13 the defendant and the tenants were under
14 agreement that each would have a key.

15 Q. At no point in time did anyone offer you a
16 key, did they?

false →

17 A. No, and I didn't ask for one. ~~False~~

18 Q. Okay. And you took it upon yourself to go
19 in and look for this item without my client's
20 permission?

21 A. Your client left the location so, yes, I
22 went into look for something to secure the door.

smobley(1)

23 Q. And that was even after you had smelt

24 allegedly marijuana?

25 A. Correct. When I first went down in there,

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1 COMMONWEALTH VS. MOBLEY

2 Your Honor, I was not aware that somebody had

3 smoked marijuana in the basement.

4 Q. You were not aware?

5 A. I wasn't concerned that somebody had smoked

6 marijuana in the basement, no.

7 Q. Okay. And you now -- let me ask you this:

8 When you say you walked back into the basement,

9 did the smell of marijuana get stronger or less?

10 A. After I had seen all the stuff in the back,

11 yes, that's when I approached that, yea, the

12 smell did grow stronger, yes.

13 Q. So at that point in time, you felt that --

14 you didn't stop and say, I need a warrant or did

15 you keep searching the basement to find the

16 marijuana?

17 A. No, I didn't search the basement. I saw

18 all the stuff on top of the desk and I saw the

19 bag there, and as I started walking back, that's

smobley(1)

20 when I could see like the top of the bag with, it

21 looked like bulk marijuana.

22 Q. Well, you observed the desk and you said

23 that you saw some plastic baggies, isn't that

24 right, on the desk?

25 A. Yea, it looked like a bulk amount of little

35

1 COMMONWEALTH VS. MOBLEY

2 Ziploc baggies.

3 Q. They were Ziploc or sandwich baggies?

4 A. No, they weren't sandwich bags. I don't

5 recall seeing them. It's more what's commonly

6 used, like nickel or dime bags for marijuana.

7 Q. Well, do you remember testifying on April

8 7th, 2016, at the preliminary hearing.

9 THE COURT: Counsel, please mark for

10 identification.

11 MR. ELMORE: This was the notes of

12 testimony.

13 (Notes of testimony marked Defense

14 Exhibit D-5 for identification.)

15 THE COURT: D-5?

16 MR. ELMORE: D-5.

smobley(1)

17 THE WITNESS: Yes.

18 THE COURT: The date, please?

19 MR. ELMORE: That was on April 7th,

20 2016.

21 THE COURT: The preliminary hearing?

22 MR. ELMORE: The preliminary

23 hearing, yes.

24 BY MR. ELMORE:

25 Q. And it's on Page 6, Line 12.

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1 COMMONWEALTH VS. MOBLEY

2 It says, "What if anything did you

3 see in the basement?

4 ANSWER: I did see packaging

5 material. Looked like empty -- sandwich --

6 sandwich baggies on the top of the desk."

7 And now today you come into the

8 courtroom and say you don't recall any sandwich

9 baggies, is that your testimony?

10 A. That's correct. All I remember, they were

11 the Ziploc bags.

12 Q. So this would have been closer to the date?

13 A. Correct, Your Honor. I could have

smobley(1)

14 misspoken, but what I recall seeing was the

15 Ziploc bags.

16 Q. But what you said in here is "sandwich."

17 You believe now you had misspoken?

18 A. Yes.

19 Q. Well, what you saw was sandwich baggies,

20 you saw sandwich baggies; isn't that right?

21 MR. WYNKOOP: Objection, asked

22 and answered.

23 THE COURT: Sustained.

24 MR. ELMORE: I have no further

25 questions at this point.

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1 COMMONWEALTH VS. MOBLEY

2 THE COURT: Any redirect?

3 MR. WYNKOOP: Briefly, Your Honor.

4 THE COURT: Yes.

5 MR. WYNKOOP: Thank you.

6 - - -

7 REDIRECT EXAMINATION

8 - - -

9 BY MR. WYNKOOP:

10 Q. When the defendant leaves the basement for

smobley(1)

11 the first time, after he finds his keys, you
12 mentioned that he had left in a hurry. Did you
13 hurry out with the defendant?

14 A. No.

15 Q. Where were you when the defendant left?

16 A. I believe I was still right outside the
17 gate talking to the tenants.

18 Q. When the defendant left did he ever say
19 anything in any way to exit his basement?

20 A. In regards to me?

21 Q. Yea, did he say anything to you when he
22 left?

23 A. No. When --

24 Q. You testified on direct and cross
25 examination he left in a hurry. When he left did

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1 COMMONWEALTH VS. MOBLEY

2 he say, get out of my basement?

3 MR. ELMORE: Objection, Your Honor,
4 to the question.

5 He never said -- that's a

6 mischaracterization. He wasn't in the
7 basement when he left.

inconsistency

smobley(1)

8 THE COURT: Well, he asked the
9 question, ~~he said no~~, and he was going
10 to make a point.

11 MR. ELMORE: Okay.

12 THE COURT: You can continue.

13 A. When he -- when I saw him apparently
14 walking off in the front, I was under the
15 understanding he was going to wait there for the
16 key.

17 THE COURT: Before you go I want to
18 ask you.

19 It's my understanding that after
20 he found the keys in the basement he
21 came outside and there was a discussion
22 between you, he and the tenant, and
23 that there was an agreement that the
24 chain and lock would get put back on
25 and each would get a key. Is

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1 COMMONWEALTH VS. MOBLEY

2 that how that worked?

3 THE WITNESS: Yes, I think that
4 agreement was made before we went into

smobley(1)

5 the basement, though, Your Honor. I
6 think it was locked and then it was
7 unlocked, and I think that's when they
8 made the agreement that each would have
9 a key. I don't think it was like
10 after.

11 THE COURT: And then he came out of
12 the basement and the defendant was gone
13 and he took the chain with him?

14 I'm trying to get my timing and
15 sequence down.

16 THE WITNESS: I didn't notice when
17 the chain was taken at that point. I
18 just know that he was supposed to get a
19 key, the tenant was supposed to keep
20 the key, and he was just walking out
21 front waiting for the key, and then
22 when we went to resecure the door, the
23 chain wasn't there. So, I don't know
24 at what point in time, I don't know if
25 it was when the key was unlocked or

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smobley(1)

2 when we left, that he might have
3 grabbed it.

4 All I know is -- after I -- the very
5 next time I saw the defendant he was
6 walking southbound on 63rd Street,
7 returning to the building with that
8 chain in his hand.

9 BY MR. WYNKOOP:

10 Q. ~~So when the defendant leaves then, officer,~~
11 ~~are you still in the basement?~~

12 A. No, I was outside.

13 Q. Okay. Now, the baggies that you see laid
14 out on top of the desk, irrespective of what we
15 call sandwich or Ziploc, did you recognize those
16 baggies to be for a purpose familiar with your
17 training and experience?

18 A. Correct, especially coupled with the fact
19 that there was a digital scale there.

20 Q. And what purpose through your training and
21 experience did you believe those baggies served?

22 A. Especially because of the smell of the
23 marijuana, I assumed it was to package marijuana.

24 MR. WYNKOOP: I have nothing
25 further, Your Honor.

smobley(1)

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1 COMMONWEALTH VS. MOBLEY

2 THE COURT: Anything else, based on
3 that?

4 MR. ELMORE: No, I have nothing
5 further, Your Honor.

6 THE COURT: Thank you, officer.

7 THE WITNESS: May I be excused?

8 THE COURT: You may.

9 THE WITNESS: Thank you.

10 MR. WYNKOOP: Your Honor, for the
11 limited purpose of the motion to
12 suppress, only, the Commonwealth would
13 rest.

14 THE COURT: Defense?

15 MR. ELMORE: Your Honor, I would
16 move the exhibits in, and I would rest.

17 THE COURT: May I have the exhibits?

18 MR. WYNKOOP: And, for the record,
19 the Commonwealth has no objection to
20 D-1 through D-5.

21 THE COURT: All right. Defense?

22 MR. ELMORE: Your Honor, I would ask

smobley(1)

23 the Court to grant this motion, based
24 on the fact that there's no permission
25 -- there's no permission and there's no

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1 COMMONWEALTH VS. MOBLEY

2 exigent circumstances.

3 Now, the testimony is this occurred
4 after he allegedly smelled marijuana.
5 Now the last I checked marijuana was
6 illegal, even though I don't think it
7 should be, but it is.

8 The real issue is, if I decided that
9 these police officers have the ability
10 to secure a building or anything
11 because they don't want to leave it
12 open, they decided, Judge, well, that
13 would be a great excuse if something
14 goes on on the front porch, well, this
15 door is unlocked, well, I have the
16 responsibility. That's why they have
17 -- that's why they secure buildings
18 because you don't have a right to go
19 past that threshold. You don't,

smobley(1)

20 without a warrant. We hold that very
21 sacred in this country.

22 He didn't have permission to go
23 inside. He can go in there and search
24 and talking about plain view, you only
25 have plain view if you're legally where

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1 COMMONWEALTH VS. MOBLEY

2 you're supposed to be at. He's not
3 legally, without anybody's permission,
4 inside this basement of the building
5 owned by this individual.

6 He simply don't have permission.
7 There's no exigent circumstances. The
8 only way we can get beyond the
9 permission is that you have to have
10 exigent circumstances.

11 Now, in this situation does he say,
12 well, I heard people down there
13 possibly destroying evidence? No. Do
14 I have a situation where a person is
15 hearing something, someone being in
16 danger? No.

smobley(1)

17 He had other means to protect that
18 location. He decided not to use it.
19 And it's strange to me that he never
20 found -- he looked in there -- maybe
21 somebody's trying to just look in the
22 door and see if there's something
23 there. There's nothing's there. So
24 what do you do?
25 We have to secure, let me check with

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1 COMMONWEALTH VS. MOBLEY
2 my partner if he got his phone number
3 his cell phone. I'll call this guy and
4 tell him, hey the situation here, you
5 need to come back and lock your door,
6 or I would ask that we send a detail, a
7 back-up detail, to secure this location
8 so no one can enter or leave until we
9 reach the owner, until it's secured, we
10 come back.

11 That's a lot less intrusive, or
12 someone violating someone's privacy of
13 going inside the house. Just think

smobley(1)

14 about it. There's a situation on the
15 porch, and somebody says, oh, I'm going
16 to go inside this house and search
17 around and see if I can find an extra
18 key.

19 It doesn't work like that. Not if
20 you're law enforcement. Let's see if
21 we can reach the owner. Until that
22 time, we need to secure the house.
23 It's not an apartment. This is a
24 house. It's a private building. You
25 simply do not go rambling through

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1 COMMONWEALTH VS. MOBLEY
2 someone's private building looking for
3 something that's not -- I could see
4 maybe if someone had gotten shot
5 outside the building and there were
6 exigent circumstances. I got to go
7 inside here to find something to
8 bandage this individual, you know. I
9 need a tourniquet or something. I got
10 to have something right away, you know,

smobley(1)

11 then they go inside, they look and they
12 go in to grab something and then they
13 see something.

14 Where's the exigent circumstances.
15 There are none. And therefore, Judge,
16 I would ask you to grant this motion
17 under the United States Constitution
18 and the Pennsylvania; the right to
19 privacy. This man here did not give
20 him permission to reenter this basement
21 and my client had already left.

22 THE COURT: Thank you.

23 MR. WYNKOOP: May I, your Honor?

24 THE COURT: You may.

25 MR. WYNKOOP: Thank you.

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1 COMMONWEALTH VS. MOBLEY

2 Your Honor, my argument is in two
3 prongs.

4 First, based on counsel's argument,
5 constitutional protection, the Court is
6 well aware, said, particularly to
7 search, particularly to enter does not

smobley(1)

8 have to be verbally spoken. There's
9 both verbal and non-verbal
10 communication.

11 What I think Your Honor heard today
12 was very fairly lengthy criminal
13 testimony from Officer Farley exactly
14 how he got into that basement on that
15 day.

16 He arrives with his partner to calm
17 down a landlord/tenant dispute. In the
18 capacity of calming that down, they
19 reach an agreement with one of the
20 tenants, they reach an agreement with
21 the landlord; they're each going to get
22 a key for this lot, securing this
23 basement which as Your Honor will
24 notice from D-1 is entered from outside
25 of the property. They're both going to

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1 COMMONWEALTH VS. MOBLEY

2 get a key. Great. The defendant says
3 to Officer Farley, I gotta' get my key
4 out of there, so I got to get in there.

smobley(1)

5 Great.

6 They walk into the basement together
7 talking about landlord/tenant disputes,
8 possible legality of turning off the
9 electric on your tenant, they're having
10 a conversation that at no point is
11 coercive, that at no point is coercive,
12 at not point is indicative of custody.
13 They're having what I would describe,
14 Your Honor, for all intense and
15 purposes of the situation a friendly
16 conversation about what the defendant
17 can and cannot do to his tenants, and
18 they arrive in the basement. At that
19 point the defendant does not turn
20 around and say, get out of my basement.
21 I don't give you permission to be here.

22 At that point it's actually Officer
23 Farley that starts looking for the keys
24 with the defendant.

25 Mr. Elmore's point that at that

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1 COMMONWEALTH VS. MOBLEY

smobley(1)

2 point Officer Farley is smelling
3 marijuana. Apparently someone smoked
4 marijuana down there. It's burnt
5 marijuana. He wasn't going to find it.
6 All he wanted to do was help the
7 defendant find his keys, and secure the
8 door, because at this point Your Honor,
9 this start of it, 10:30 at night, it
10 had to be approaching 11:00, if not
11 later, and the defendant disappears on
12 Officer Farley.

13 Not only that, Officer Farley
14 notices that the chain that had secured
15 this door, which was needing to be
16 resecured at 11:00 at night was gone.

17 So rather than up and leave the
18 area, rather than leave the defendant's
19 door wide open, to what he describes as
20 his office, to what controls the
21 electrical control panel for the entire
22 building, rather than do that, Officer
23 Farley was just looking for the chain
24 that had initially secured it, that the
25 landlord tenant now had a key to.

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1 COMMONWEALTH VS. MOBLEY

2 At no point did the defendant -- is
3 there any testimony that the defendant
4 withdraws consent; that he says get out
5 of my basement and at this point we
6 have conduct, non-verbal conduct that
7 tells us the defendant had no problem
8 with Officer Farley being in his
9 basement.

10 That I believe is the constitutional
11 argument that rebuts counsel's
12 argument, Your Honor, that there's
13 permission given; that that consent was
14 not withdrawn that the defendant had
15 the opportunity to withdraw that
16 consent and didn't; and, therefore,
17 Officer Farley viewed the paraphernalia
18 and marijuana from a legal vantage
19 point thereby it was within the
20 Constitution both the United States and
21 Pennsylvania.

22 The second prong, Your Honor, I

smobley(1)

23 don't really believe that we reached a
24 constitutional trigger here, and I
25 would incorporate my argument from

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1 COMMONWEALTH VS. MOBLEY

2 Prong I, and I would ask Your Honor to
3 just consider the testimony of Officer
4 Farley. He wasn't looking for
5 contraband. He's not down there
6 looking for anything. In fact this is
7 Officer Farley taking a step back from
8 arresting people, one of the things
9 that police officers do, to helping and
10 aiding in the community. And I think
11 throughout his testimony we have
12 examples of him trying to help the
13 community; not lock anybody up, not
14 search for contraband, not jam up the
15 defendant and find contraband in his
16 basement, he's trying to help.

17 I don't believe that at any point
18 here, anything that he does either on
19 the premises or to the defendant

smobley(1)

20 triggers the Constitution. Because
21 there's no Constitutional triggers this
22 motion is not ripe.

23 I think everything that Officer
24 Farley did while he was within the
25 confines of the Constitution are legal

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1 COMMONWEALTH VS. MOBLEY

2 and doesn't trigger the Constitution.

3 Officer Farley was trying to help
4 this man. While doing that he
5 discovered what he believed to be bulk
6 marijuana through his training and
7 experience, from a legal vantage point,
8 and while we're talking about
9 constitutional triggers, Officer Farley
10 again credibly testifies as soon as I
11 saw the scale and the bulk marijuana I
12 stopped, I left.

13 It's at that point he's gone from
14 aiding the community to his other role
15 as a police officer which is
16 investigating what he believes to be a

smobley(1)

17 crime. And he takes those clear and
18 articulable facts he gives them to his
19 supervisor, they give them to
20 Philadelphia detectives and a search
21 warrant is legally obtained.

22 At that point a search warrant is
23 executed, but at no point is the
24 constitution violated and I don't
25 believe at any point do I think the

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1 COMMONWEALTH VS. MOBLEY

2 Constitution was triggered and I'd ask
3 Your Honor to deny the motion to
4 suppress.

5 THE COURT: Thank you.

6 It's an interesting issue, but
7 these are certainly fact specific; the
8 officer arrives on the scene and
9 there's some type of argument between
10 the landlord and the tenant, and
11 they're trying to get it resolved. And
12 it seems that part of the resolution
13 was that the chain and padlock would be

smobley(1)

14 replaced on the door and each one would
15 have a key.

16 When the defendant first initially
17 said he had to get a key before he
18 wanted to leave, he couldn't find it
19 and the officer accompanied him in the
20 basement without protection.

21 So then when they come back out to
22 close the deal, so to speak, to put the
23 chain and the padlock back on the door
24 the defendant's missing, and so is the
25 chain, but the door's wide open.

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1 COMMONWEALTH VS. MOBLEY

2 So the officer has no idea as to
3 whether the chain was taken, was
4 inside, was outside. If the officer
5 leaves and leaves the door wide open
6 and all kinds of damage happens, then
7 you're going to hear hell. But the
8 door was open the door was never
9 secured and the officer credibly
10 testified that he just went there to

smobley(1)

11 see if the chain was there so he could
12 fasten the door because he knew the
13 landlord had a key, and in that,
14 looking for that chain, which was
15 agreed upon was when he noticed the
16 thing on the defendant's desk and then
17 the bulk marijuana.

18 I don't see that the constitutional
19 protections of entering into someone's
20 home in this particular case, given all
21 of the facts and circumstances, and the
22 interchange between this defendant and
23 this officer, and what was happening in
24 the agreements that were made, tried to
25 keep the peace, that the officer made

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1 COMMONWEALTH VS. MOBLEY
2 an entry without permission or lack
3 thereof, and for those reasons I will
4 deny the motion to suppress.

5 MR. WYNKOOP: And, Your Honor, I
6 will be ready to proceed to trial. I
7 just need to wrangle my detective and

smobley(1)

8 my chemist.

9 (Pause.)

10 MR. WYNKOOP: Your Honor, with the
11 Court's permission there were two
12 detectives that were present that day.

13 (Pause.)

14 MR. ELMORE: This is the detective
15 who did what?

16 MR. WYNKOOP: Who did the search.
17 It's on the paperwork. The two of them
18 executed the search together.

19 THE COURT: If you think you need
20 the other officer, I'll give this a
21 date.

22 MR. ELMORE: No, we don't want a
23 date.

24 THE COURT: Okay.

25 MR. WYNKOOP: So I could just let

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1 COMMONWEALTH VS. MOBLEY
2 the detective look over the paperwork
3 and the property receipts --

4 THE COURT: Sure.

smobley(1)

5 MR. WYNKOOP: -- and I'll call him

6 to testify.

7 (Pause.)

8 MR. ELMORE: Your Honor, we have not

9 colloquyed my client and I just got to

10 talking to my client, and he's going to

11 demand a jury.

12 He called me in the back.

13 MR. WYNKOOP: May I release

14 everybody?

15 THE COURT: You may.

16 - - -

17 (Motion to suppress concluded.)

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smobley(1)

C E R T I F I C A T I O N

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I hereby certify that the
proceedings and evidence are contained
fully and accurately in the notes taken
by me on the matter of the above cause,
and this copy is a correct transcript
of same.

KIM TOWARNICKI
Official Court Reporter

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